UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
---X
In re: Chapter 7

CENTEREACH DEVELOPMENT CORP., Case No.: 15-70120-AST

Debtors.
---X
TRACEY GIARDINI, CRAIG GIARDINI,
and CRAIGS CAR CARE CENTER,

Plaintiffs.

Adv. Proc. No. 15-08013-ast

v.

THE BANKRUPTCY ESTATE OF
CENTEREACH DEV. CORP.,
GULF OIL LIMITED PARTNERSHIP,
and CUMBERLAND FARMS, INC.,

Defendants.
---X

STIPULATION OF DISMISSAL AND DISCONTINUANCE OF ADVERSARY PROCEEDING

WHEREAS, On January 13, 2015 (the "**Petition Date**"), the Debtor, Centereach Development Corp. (the "Debtor") filed a voluntary petition for relief from its creditors under Chapter 7 of the Bankruptcy Reform Act of 1978, as amended (the "**Bankruptcy Code**") and

WHEREAS, by Order of the Bankruptcy Court (the "**Court**"), entered August 8, 2016, the Debtor's case was substantively consolidated with other related cases under lead case No. 15-70118-ast; and

WHEREAS, Robert L. Pryor, Esq. (the "**Trustee**") qualified, and is acting, as permanent trustee of the Debtor's estate; and

WHEREAS, January 26, 2015, the Plaintiffs, TRACEY GIARDINI, CRAIG

GIARDINI, and CRAIGS CAR CARE CENTER (the "**Plaintiffs**"), commenced the instant Adversary Proceeding (the "**Adversary Proceeding**"), seeking, *inter alia*, injunctive relief in connection with a sub-lease (the "**Lease**") entered between the Plaintiffs and the Debtor originally dated April 28, 2010 and Lease and Modification Agreement dated the ___ day of March, 2013 concerning commercial real property located at 2033 Middle Country Road, Centereach, NY 11720 (the **"Demised Premises**"); and

WHEREAS, By Order of the Bankruptcy Court entered on February 18, 2015 (the "**February 18 Order**") the Bankruptcy Court entered an order granting a temporary restraining order [Docket No. 13] which required, *inter alia*, for the Plaintiffs to make all payments due and owing under the Lease to the Trustee, however, the Plaintiffs were permitted to deduct certain expenses and required to provide the Trustee with copies of all paid invoices; and

WHEREAS, The Trustee filed an Answer with Counterclaims (the "**Counterclaims**") to the Plaintiffs' Adversary Proceeding dated June 24, 2015 (the "**Answer**"); and

WHEREAS, the Trustee sold all of the Debtor's assets on or about June 18, 2015 and predicated upon same and by Order of the Bankruptcy Court entered on October 21, 2015, the Plaintiffs' Adversary Proceeding was dismissed with prejudice as to the Trustee and the other defendant; and

WHEREAS, the Counterclaims contained in Trustee's Answer were severed from the Plaintiffs' complaint and were permitted to continue as independent causes of action against the Plaintiffs; and

WHEREAS, Plaintiffs have asserted and have produced to Trustee's counsel various documents, including, invoices, receipts and checks, to establish certain sets offs to the amounts which may be due to the Trustee under the Lease as asserted in the Counterclaims; and

WHEREAS, Plaintiffs have asserted and hereby acknowledge that they have been forced to vacate the Demised Premises resulting in loss of business and increased expenses; and

WHEREAS, Plaintiffs have asserted and hereby acknowledge that they are in significant financial distress, which appears likely to continue for the foreseeable future; and

WHEREAS, in light of the Plaintiffs' assertion of certain set offs as provided in the February 18 Order and Lease, together with the asserted financial hardship and the costs and uncertainty of litigation, the parties are desirous of resolving the litigation without the need for further expenses; and

WHEREAS, no party to the above entitled Adversary Proceeding is an infant, incompetent person for whom a committee has been appointed or conservatee and no party has an interest in the subject matter of the action; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Plaintiffs and Trustee as follows:

1. Upon filing of this stipulation (the "**Stipulation**"), the Adversary Proceeding and Counterclaims shall be deemed discontinued and dismissed, without costs to either party, pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) and (c).

2. This Stipulation is binding upon and shall inure to the benefit of the parties, including their heirs, successors and assigns.

3. Each of the parties, by and through their respective counsel, acknowledges that he has read all of the terms of this Stipulation and enters into those terms voluntarily and without duress.

4. The parties hereby understand and acknowledge that this Stipulation is entered into

for the settlement of disputed claims, and this Stipulation is not to be construed as an admission of liability on the part of any party released hereby, all such liability being denied.

5. In the event that this Stipulation is not or cannot be filed with the Bankruptcy Court, this Stipulation shall become null and void.

6. In the event that Stipulation shall become null and void for any reason, this Stipulation to dismiss and discontinue this Adversary Proceeding shall be deemed to have been made without prejudice and immediately withdrawn, and the Stipulation or its terms shall not be allowed or permitted to be used against the parties hereto in any litigation.

7. The parties specifically agree to the jurisdiction of the Bankruptcy Court for the Eastern District of New York to hear and determine any and all issues arising out of, or relating to, this Stipulation.

Dated: Westbury, New York
August 26, 2016

PRYOR & MANDELUP, L.L.P.
Attorneys for Chapter 7 Trustee
/s/ Anthony F. Giuliano

By: ______________________________

Anthony F. Giuliano
675 Old Country Road
Westbury, New York 11590
(516) 997-0999

Dated: Hauppauge, New York
August 26, 2016

ZINKER & HERTZBERG, LLP
Attorneys for Plaintiffs
/s/ Jeffrey Herzberg
By: ____________________________________

Jeffrey Herzberg
300 Rabro Drive
Hauppauge, NY 11788
631-265-2133

SO ORDERED:

Dated: September 21, 2016
Central Islip, New York

____
Alan S. Trust
United States Bankruptcy Judge

I:\CLIENT_FILES\A&B MART & RELATED CASES\GIARDINI ADV PRO\15-08013O.DOCX